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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Fernando Gastelum,

No. 2:18-cv-00143-DLR

## Plaintiff

## **RESPONSE IN OPPOSITION TO PLAINTIFF'S FEES, COSTS AND EXPENSES**

VS.

Kalisha, LLC,

## Defendant

Defendant Kalisha, LLC (“Kalisha” or “Defendant”), through counsel, respectfully responds in opposition to Plaintiffs’ Application for Fees, Costs and Expenses (“Application”), filed on February 28, 2018 [Doc. # 13], as follows:

## I. INTRODUCTION

This Court has been asked to determine the amount of “reasonable attorney’s fees” Mr. Strojnik should be awarded for drafting a copy-and-paste complaint in which the Plaintiff only prevailed on one of his five causes of action.

The Court is well aware of Mr. Strojnik and his history of ADA litigation in Arizona since 2015.<sup>1</sup> In fact, the State Bar of Arizona has recently moved for an interim suspension of Mr. Strojnik's law license because the State Bar believes that

<sup>1</sup> The revisionist history described in the fee application regarding Mr. Strojnik's ADA litigation in Maricopa County is demonstrably false. Put simply, he served as lead counsel in more than 1200 ADA cases that were consolidated and collectively dismissed for lack of standing. Mr. Strojnik and his client, Advocates for Individuals with Disabilities Foundation, agreed to pay \$25,000 in sanctions and agreed not to appeal the trial court's dismissal.

1 Mr. Strojnik “has engaged in conduct the continuation of which will result in  
2 substantial harm, loss or damage to the public, the legal profession or the  
3 administration of justice.”<sup>2</sup> See Exhibit A. In September 2017 Arizona District Court  
4 Judge Neil Wake referred to Mr. Strojnik’s litigation tactics—i.e., filing a copy-and-  
5 paste complaint and then demanding a minimum of \$5,000 in attorneys’ fees to settle  
6 the case—as “unethical extortion”. See Exhibit B.

As more fully discussed below, the Court has ample justification to outright deny the Plaintiff's fee application because, among other reasons, the fee agreement between Mr. Strojnik and the Plaintiff is void as a matter of public policy. In a deposition taken by undersigned counsel in November 2017, Plaintiff admitted that he receives a \$350.00 flat rate for any ADA case that settles (or when money is collected from the Defendant). At the time of the deposition Plaintiff had settled five (5) cases. The Plaintiff admitted that he did not know the amount that the cases had settled for—only that he received his \$350.00 in a sealed envelope from Mr. Strojnik once the money was collected. The language of the fee agreement between Plaintiff and Mr. Strojnik purportedly gives Mr. Strojnik “unfettered discretion in all settlement matters provided, however, that Client’s consent shall be required when the settlement amount is less than \$350.00 payable to Client.” At least one of those settlement agreements has been entered into evidence in another matter. The case settled for \$18,750.00. See Exhibit C. This means Plaintiff collected less than 2% of the settlement amount with the remaining 98% presumably going to Mr. Strojnik.

22 The procedural history of this case is as simple as it gets. Plaintiff filed a  
23 copy-and-paste Complaint on January 14, 2018. Defendant's counsel filed a Notice  
24 of Appearance on February 15, 2018 and served an Offer of Judgment on that same  
25 day. The Offer of Judgment was accepted on February 16, 2018. Defendant did not

<sup>27</sup> The Presiding Disciplinary Judge had not yet ruled on the State Bar's Motion for Interim Suspension by the time this Response was filed with the Court.

1 even have to file an Answer. In spite of this, Mr. Strojnik still claims he incurred  
 2 more than \$8,000.00 in attorney's fees. To put this in perspective, Plaintiff filed 85  
 3 (virtually identical) ADA lawsuits between August 1, 2017 and January 30, 2018.  
 4 According to Mr. Strojnik, he is entitled to collect at least \$688,500.00 for simply  
 5 drafting those 85 Complaints—and performing no other substantive legal work—  
 6 over that six month stretch. Mr. Strojnik's fee application in this case should not be  
 7 viewed in a vacuum, but rather as part of a broader narrative (and, especially, in light  
 8 of Judge Wake's and the State Bar's claims that Mr. Strojnik's litigation tactics  
 9 amount to unethical extortion).

10 Defendant urges the Court to use its discretion to outright deny Mr. Strojnik's  
 11 application for fees (especially if his license to practice law has been suspended), or  
 12 at the very least to reduce his fees to a "reasonable" amount that does not shock the  
 13 conscience and offend the notions of fairness and equity.

14 **II. FACTUAL BACKGROUND**

15 Defendant owns and operates a Sleep Inn franchise located at 2621 South 47<sup>th</sup>  
 16 Place in Phoenix, Arizona. Plaintiff is a resident of Casa Grande, Arizona who had  
 17 not stayed in a Phoenix-area hotel for several years prior to being introduced to Mr.  
 18 Strojnik. Currently, he has sued more than 95 Phoenix-area hotels since July 29,  
 19 2017 claiming that he planned to stay in each of them. When asked at his deposition  
 20 why his "desire" to stay in Phoenix-area hotels had suddenly increased from zero in  
 21 2015-2016 to more than 90 hotels within a six month time period, Mr. Gastelum  
 22 replied "No particular reason."

23 The Complaint in this matter was filed on January 14, 2018, the 78<sup>th</sup> ADA  
 24 complaint filed by Plaintiff since July 29, 2017. All the Complaints are virtually  
 25 identical—only a handful of paragraphs within the Complaint contain allegations  
 26 unique to the Defendant.

27 Plaintiff's Complaint contained five claims: (1) ADA, (2) Negligence, (3)  
 28

1 Negligent Misrepresentation, (4) Failure to Disclose, and (5) Consumer Fraud/Common  
2 Law Fraud. Plaintiff is only entitled to his reasonable fees for the ADA claim—there is  
3 no recovery of fees for work spent on the remaining state law tort claims.<sup>3</sup>

4 Plaintiff is in the process of retaining Paul Farber, a certified accessibility  
5 expert, to review the alleged violations at the hotel to determine whether they are  
6 valid.<sup>4</sup> Defendant has committed to remedy any readily achievable violations within a  
7 reasonable time period. Whether the Plaintiff actually intended to stay at Defendant's  
8 hotel, and whether the minor ADA violations at the property actually deter the  
9 Plaintiff from staying at Defendant's hotel sufficient to confer Article III standing is  
10 dubious—regardless, the expense of litigating that issue does not make economic  
11 sense for Defendant.

12 Plaintiff also alleged that he encountered ADA violations on the GreenTree  
13 website and during the online reservation process. Defendant does not own (or  
14 control) the GreeTree website—it is owned and controlled by GreenTree Inns Hotel  
15 Management Group, Inc. Whether Defendant, a franchisee, is actually liable for  
16 ADA violations on a website that it does not own or control (and thus, whether  
17 Defendant is even the proper defendant in this lawsuit) is a valid legal issue that,  
18 again due to its limited financial means, did not make economic sense for Defendant  
19 to litigate. However, in an analogous case, the Ninth Circuit recently held that tenants  
20 were not liable for ADA violations in areas that were exclusively under the control of  
21 the landlord. *Kohler v. Bed Bath & Beyond of California, LLC*, 780 F.3d 1260, 1266  
22 (9th Cir. 2015). Defendant is attempting to work with GreenTree Inns Hotel  
23 Management Group, Inc. to remedy any alleged website ADA violation(s).

<sup>27</sup> <sup>3</sup> Not that it matters. Plaintiff did not prevail on his tort claims.

<sup>4</sup> Typically less than half of the ADA violations alleged by Plaintiff in his Complaint are valid.

1           **II.     LEGAL ARGUMENT**

2           **A. The Court has the discretion to (and should) outright deny Plaintiff's**  

3           **fee application.**

4           A prevailing plaintiff under the ADA should ordinarily recover a reasonable  

5 attorney's fee *unless special circumstances would render such an award unjust.*

6 Barrios v. Cal. Interscholastic Fed'n, 277 F.3d 1128, 1134 (9th Cir. 2002) (Emphasis

7 added).

8           The Arizona District Court has already held that Mr. Strojnik's extortionist  

9 litigation tactics warrant an outright denial of attorney's fees. On September 1, 2017,  

10 Judge Neil Wake of the District Court of Arizona issued an eleven page ruling  

11 against another serial ADA litigant represented by Mr. Strojnik, which culminated  

12 with the following conclusion:

13           In this case, the complaint demanded a minimum of \$5,000 in  

14 attorney's fees. In a simple form complaint case like this, it is  

15 impossible that the fee for preparing and filing the complaint could be  

16 \$5,000. Moreover, the federal disability statute allows the award of  

17 only "a reasonable attorney's fee," not any fee the attorney may  

18 demand. **No fee is the reasonable fee for an unnecessary lawsuit**  

**that a demand letter would have taken care of. A demand for a fee**  

**beyond what is reasonable is a demand without legal basis under**  

**the ADA.**

19 Advocates for Individuals with Disabilities LLC v. MidFirst Bank, 2017 WL 3872419  

20 at \*6 (D. Ariz. September 5, 2017). See Exhibit A.<sup>5</sup>

21           Judge Wake's opinion rejecting attorneys' fees for serial ADA plaintiffs is  

22 entirely consistent with United States Supreme Court precedent. In Buckhannon Bd.  

23 and Care Home, Inc. v. West Virginia Dept. of Health and Human Resources, 532  

24 U.S. 598, 121 S.Ct. 1835 (2001), the Supreme Court found that one of the purposes  

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26           <sup>5</sup> While the ruling in Advocates for Individuals with Disabilities LLC v. MidFirst

27 Bank

28 is not binding, it certainly is persuasive. Gustafson v. Goodman Manufacturing  

Company LP, 2016 WL 1029333 at \*3 (D. Ariz. March 14, 2016).

1 in giving a trial court discretion to outright deny an award of attorneys' fees to a  
 2 prevailing plaintiff in an ADA case is to discourage "extortionist" behavior. *Id.* at  
 3 618, 640 ("And Congress assigned responsibility for awarding fees not to automatons  
 4 unable to recognize extortionists, but to judges expected and instructed to exercise  
 5 'discretion'"). Judge Wake's opinion lamented that serial ADA plaintiffs'  
 6 "extortionist practices" (led by Mr. Strojnik) had become "pervasive" in Arizona.

7 By the time Judge Wake had issued his rejection of Mr. Strojnik's "unethical"  
 8 and "extortionate" demands for \$5,000, Mr. Strojnik and Mr. Gastelum had already  
 9 filed more than two dozen of these ADA lawsuits demanding tens of thousands in  
 10 fees following service of the complaints. This litigation tactic is precisely why the  
 11 ADA granted (and the U.S. Supreme Court emphasized the importance of) trial  
 12 courts' discretion to rein in the extortionate behavior of plaintiff's attorneys who  
 13 collect millions in attorneys' fees under the guise of civil rights litigation.

14 The State Bar of Arizona agrees with Judge Wake's ruling and has taken the  
 15 extraordinary measure of seeking an immediate suspension of Mr. Strojnik's law  
 16 license because his litigation tactics in these ADA cases has caused "substantial  
 17 harm, loss or damage to the public, the legal profession or the administration of  
 18 justice." They also argue that Mr. Strojnik's ADA lawsuits "appear to be nothing  
 19 more than vehicles for [Mr. Strojnik] to extort unreasonable attorney's fees from  
 20 defendants." See Exhibit A.

21 The Court may also deny the Plaintiff's fee application because the underlying  
 22 fee agreement between Plaintiff and Mr. Strojnik violates Ethical Rule 1.2.

23 ER 1.2(a) provides that:

24 A lawyer shall abide by a client's decisions concerning the objectives  
 25 of representation and, as required by ER 1.4, shall consult with the  
 26 client as to the means by which they are to be pursued. A lawyer may  
 27 take such action on behalf of the client as is impliedly authorized to  
 28 carry out the representation. A lawyer shall abide by a client's  
 decision whether to settle a matter.

1 Ariz. Op. 94-02 explains that a “client may not be asked to agree to representation so  
 2 limited in scope that the client surrenders the right to settle his or her own matter.”

3 The Comment to ER 1.2(a) also provides that the “decisions specified in ER  
 4 1.2(a), **such as whether to settle a civil matter, must also be made by the client.**”  
 5 (Emphasis added). See Exhibit D. The fee agreement between Mr. Gastelum and Mr.  
 6 Strojnik gives Mr. Strojnik unfettered discretion to settle the Plaintiff’s case, thus it  
 7 violates ER 1.2(a). When a fee agreement in Arizona violates public policy by failing  
 8 to comply with the Rules of Professional Conduct, the attorney is not entitled to any  
 9 fee. *Peterson v. Anderson*, 155 Ariz. 108, 745 P.2d 166 (App. 1987).

10 Accordingly, Mr. Strojnik is not permitted to recover a fee in this matter  
 11 because his fee agreement violates ER 1.2(a)

12 **B. In the event the Court opts to award fees to Plaintiff, it should find**  
 13 **that Mr. Strojnik’s 12.5 hours expended and \$650 hourly rate for a**  
**copy-and-paste Complaint are not justified under the Kerr factors.**

15 The ADA states that the court “in its discretion, may allow the prevailing party...  
 16 a reasonable attorney’s fee, including litigation expenses, and costs...” 42 U.S.C. §  
 17 12205. The most useful starting point for determining the amount of a reasonable fee is  
 18 the number of hours *reasonably* expended on the litigation multiplied by a *reasonable*  
 19 hourly rate. *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983) (Emphasis added). Trial  
 20 courts are not accountants, though, and “may take into account their overall sense of a  
 21 suit, and may use estimates in calculating and allocating an attorney’s time.” *Fox v. Vice*,  
 22 131 S.Ct. 2205, 2216 (2011) (Emphasis added).

23 Utilization of the *Kerr* factors, therefore, “provides a measuring stick whereby  
 24 an appeals court can evaluate whether the district court acted within its broad  
 25 discretion to enhance or reduce a fee award based on the facts of a particular case.”  
 26 *Hohlbein v. Utah Land Resources, LLC*, 2015 WL 1413503 at \*4 (D. Nevada, March  
 27 2015).

1           The *Kerr* factors include:

2           (1) the time and labor required, (2) the novelty and difficulty of the questions  
 3 involved, (3) the skill requisite to perform the legal service properly, (4) the  
 4 preclusion of other employment by the attorney due to acceptance of the case, (5) the  
 5 customary fee, (6) whether the fee is fixed or contingent, (7) time limitations  
 6 imposed by the client or the circumstances, (8) the amount involved and the results  
 7 obtained, (9) the experience, reputation, and ability of the attorneys, (10) the  
 8 ‘undesirability’ of the case, (11) the nature and length of the professional relationship  
 9 with the client, and (12) awards in similar cases. *Kerr v. Screen Extras Guild, Inc.*  
 10 526 F.2d 67, 70 (9th Cir. 1975)

11           The Ninth Circuit has also recognized that an initial “haircut” of 10% is  
 12 warranted when the defendant makes a good faith effort to comply with the ADA once  
 13 they received notice of the specific violations. *Gonzales v. City of Maywood*, 729 F.3d  
 14 1196, 1203 (9th Cir. 2013). This percentage reduction is based on an exercise of the  
 15 Court’s discretion and may be made “without a more specific explanation.” *Id.* (citing  
 16 *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008)).

17           **Time and Labor Expended**

18           As expressed by Judge Wake, it is “impossible” that the fees incurred for  
 19 preparing a simple form copy-and-paste Complaint could amount to \$5,000, let alone  
 20 the \$6,045 (9.3 hours at \$650/hour) that Mr. Strojnik claims he incurred in preparing  
 21 and filing this particular complaint.

22           The following are some, but not all, of the time entries that are unreasonable:

23           • Mr. Strojnik claims he spent 1.5 hours in an in-person meeting with Mr.  
 24 Gastelum to discuss the “issues raised by the client and matters of  
 25 representation.”<sup>6</sup>

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26           <sup>6</sup> It appears this “in person meeting” between Mr. Gastelum and Mr. Strojnik “to  
 27 discuss matters of representation” is a standard entry in every case. For example,  
 28 attached are three other Statements of Account provided by Mr. Strojnik in fee  
 applications in which he bills for this same meeting. See Exhibit E. What could Mr.  
 Strojnik and Mr. Gastelum be meeting about for 1.5 hours regarding matters of

- It was not reasonable for Mr. Strojnik to spend 1.60 hours doing a “due diligence” visit to the Defendant’s hotel. This visit would have been better accomplished by an ADA expert at a much cheaper hourly rate. For example, Defendant’s ADA expert Mr. Farber charges \$175/hour.
- The 1.2 hours Mr. Strojnik claimed to spend reviewing the Defendant’s website for violations of 28 CFR § 36.302(e) is unreasonable. A purportedly skilled ADA lawyer like Mr. Strojnik should be able to identify § 36.302(e) violations within two to three minutes—it is impossible that it would take 1.2 hours, especially considering this is the 78<sup>th</sup> ADA lawsuit filed by Mr. Strojnik alleging violations of § 36.302.(e).
- The MIDP responses (.5 hours) and Discovery Requests (.25 hours) prepared by Mr. Strojnik were unreasonable. The MIDP responses were not due until 30 days after Defendant filed its Answer and the Discovery Requests could not even be served until after both parties exchanged their MIDP responses. Because this case was resolved prior to Defendant even filing its Answer, any time allegedly spent by Mr. Strojnik preparing the MIDP responses and Discovery Requests was unreasonable and should be disregarded by the Court.
- Twenty-one (21) of the thirty-nine (39) time entries on Mr. Strojnik’s Statement of Account were billed as .1 or .15 for doing mundane tasks that could have been competently performed by a legal assistant or paralegal (at a much lower hourly rate).<sup>7</sup>
- The Court must consider that a substantial portion of Mr. Strojnik’s time was spent preparing to litigate the state tort claims Plaintiff alleged: Negligence, Negligent Misrepresentation, Failure to Disclose, Consumer Fraud and Common Law Fraud. The Plaintiff did not prevail on those claims nor is Mr. Strojnik entitled to collect fees for time spent working on those claims (which comprised 80% of the claims brought).

i. Lack of Pre-Litigation Notice

Lack of pre-litigation notice is one of the main factors the Court may consider when determining whether to *reduce the amount of attorney's fees* it awards to the

representation in this case that had not been discussed in the same meeting on apparently 77 previous occasions? Perhaps this meeting makes sense in the first couple of ADA cases they filed, but it is unreasonable for the 77<sup>th</sup> ADA Complaint.

<sup>7</sup> For example, Mr. Strojnik billed a .1 for “Review Doc 3 – Consent Form” and a separate .1 entry on that same day for “Review Doc 3-1 – Consent Form Instructions”. Considering this was the 78<sup>th</sup> ADA lawsuit he has filed in Federal Court since July 29, 2017, it is unreasonable to bill several hours’ worth of .1 entries.

1 “prevailing plaintiff.” *Jankey v. Poop Deck*, 537 F.3d 1122, 1132 (9th Cir. 2008)  
 2 (Emphasis added).

3 A district court may, in its protraction analysis, consider whether a  
 4 plaintiff provided pre-litigation notice. Pre-litigation notice is not  
 5 required, and failing to provide notice is not unjust, but district courts  
 6 have discretion to consider all kinds of non-required conduct in  
 7 deciding whether litigants have protracted litigation.

8 While a district court may not reduce fees on the premise that the suit  
 9 should not have been filed at all before providing notice, it does have  
 10 discretion to determine whether failing to provide pre-litigation notice  
 11 resulted in unnecessary fees during the course of the litigation—that is,  
 12 fees that would have been lower had there been notice before filing.

13 *Jankey*, 537 F.3d at 1132.

14 Defendant’s principal, Dipesh Patel, has signed a declaration stating that he  
 15 would have responded to a pre-litigation notice from Mr. Gastelum and would have  
 16 immediately undertaken remedial efforts. See Exhibit F. While pre-litigation notice is  
 17 not specifically required by the ADA, it is generally the custom in civil rights  
 18 disputes. Pre-litigation notices can prevent both sides from incurring unnecessary  
 19 attorneys’ fees by exploring the possibility of early resolution. Why Plaintiff chose  
 20 not to provide notice to Defendant prior to filing suit is not a mystery. The answer is  
 21 money—Plaintiff would not have received his \$350.00 flat rate and Mr. Strojnik  
 22 would not have been able to claim more than ten thousand in fees and costs had they  
 23 provided pre-litigation notice.

## 24 **Novelty and Difficulty of the Issues Involved**

25 This case is routine for Mr. Strojnik—it was the 78<sup>th</sup> ADA complaint filed by  
 26 the Plaintiff between July 29, 2017 and January 8, 2018. The issues are  
 27 straightforward. Pursuant to 28 CFR § 36.302(e), a hotel’s website must allow  
 28 individuals with disabilities to (1) reserve accessible guest rooms online and (2) to  
 identify the accessible features of the property in enough detail so that an individual

1 with disabilities can determine whether the property meets his or her accessibility  
 2 needs. The other ADA violations alleged in the Complaint are run-of-the-mill ADA  
 3 violations.

4       The straightforwardness of this case weighs against a high fee rate and a high  
 5 fee award. *See Moreno v. City of Sacramento*, 534 F.3d 1106, 1116 (holding that the  
 6 district court “may properly use the simplicity of a given task as justification for a  
 7 reduction in the rate for the hours spent performing that task or as a justification for a  
 8 reduction in the overall rate”).

9       Regardless, Mr. Strojnik’s hourly rate of \$650.00 is unreasonable on its face.  
 10 According to the survey of hourly rates published in the *State Bar of Arizona 2016*  
 11 *Economics of Law Practice in Arizona* the median hourly rate in Arizona for a plaintiff  
 12 litigation attorney with 30 – 39 years of experience is \$299 and for a plaintiff personal  
 13 injury attorney is \$312. See Exhibit G. In other words, Mr. Strojnik’s claimed rate of  
 14 \$650/hour is more than double the average rates charged by Arizona plaintiffs’ lawyers  
 15 with similar years of experience. His rate is especially unreasonable in light of the  
 16 simplistic legal and procedural issues involved in this matter.

17       Furthermore, the 104.80 hours that Mr. Strojnik claims he devoted to “pre-filing  
 18 due diligence” in July 2017 should not be apportioned to this case, the 78<sup>th</sup> ADA case he  
 19 filed since conducting that pre-filing due diligence. Those 104.80 hours should have  
 20 been billed to the first lawsuit he filed, *Gastelum v. MCPHX17, LLC*, 2:17-cv-02536-  
 21 DGC, and not to this case (or any subsequent case) in a pro-rata fashion.

22                   **The skill requisite to perform the legal service properly.**

23       A legal assistant or paralegal could have performed the vast majority of work  
 24 in this case. As Mr. Strojnik concedes, the Complaint is virtually identical to the 77  
 25 he had previously filed. Mr. Strojnik’s Statement of Account demonstrates that  
 26 (besides the copy-and-paste Complaint) there was *no substantive legal work*  
 27 *performed* in this case. Even if Mr. Strojnik was considered by the Court to be a  
 28

1 highly experienced ADA attorney—despite having lost more than 1200 ADA cases  
2 in one day—none of that experience was needed to prosecute or resolve this lawsuit.

3                   **The preclusion of other employment by Mr. Strojnik due to  
4 acceptance of the case and his customary fee.**

5                   Mr. Strojnik concedes that representing Mr. Gastelum takes up approximately  
6 90% of his time—together they average approximately 20 new case filings a month.  
7 Mr. Strojnik does not indicate that any of his other (non pro-bono) clients currently  
8 or in the past have ever retained his services at a rate of \$650 per hour. This factor  
9 cuts in favor of reducing his fee amount.

10                  **Whether fee is fixed or contingent.**

11                  Pursuant to the fee agreement between Mr. Gastelum and Mr. Strojnik, Mr.  
12 Gastelum will never be personally liable to pay Mr. Strojnik's fees, even if Mr.  
13 Gastelum does not prevail in the matter. The fee agreement states that in the event "a  
14 particular Claim does not result in a settlement or an award of costs, expenses and  
15 fees, then Attorney shall be entitled to recover his costs and expenses from the  
16 proceeds of another Claim or waive the costs and expenses at his discretion." This  
17 factor cuts in favor of reducing Mr. Strojnik's claim for fees.

18                  **The amount involved and the results obtained.**

19                  Defendant concedes that Plaintiff should be considered a "prevailing plaintiff"  
20 in this matter. Defendant has agreed to remedy the valid ADA violations on its  
21 property and to work with Choice Hotels to remedy the alleged violations on the  
22 website. It is important to remember, however, that Plaintiff only prevailed on one of  
23 the five claims he alleged in his Complaint. The remaining state law tort claims did not  
24 generate any damages for Plaintiff. This factor cuts in favor of reducing Mr. Strojnik's  
25 claim for fees.

26                  **The experience, reputation, and ability of the attorneys.**

27                  While Mr. Strojnik has been practicing commercial litigation for more than 35  
28

1 years, he has only been litigating ADA matters since 2015. As to his reputation, he is  
 2 widely considered to be the most controversial attorney currently practicing in Arizona.  
 3 A google search of his name will reveal numerous articles, news reports, judicial  
 4 opinions, and State Bar disciplinary proceedings disapproving of his ADA litigation  
 5 efforts. While he has served as lead counsel in more than 2000 ADA cases the vast  
 6 majority were consolidated and dismissed by Maricopa Superior Court Judge David  
 7 Talamante. In addition, it does not appear that he has ever taken an ADA case to trial or  
 8 even extensively litigated one. This factor cuts in favor of reducing his fee amount.

9                   **The ‘undesirability’ of the case.**

10                  As Mr. Strojnik concedes, these lawsuits are not popular in Arizona among the  
  11 business or disability community. This is not because the business community  
  12 opposes the ADA, the current climate is such solely due to Mr. Strojnik’s serial ADA  
  13 litigation—more than 2000 “drive by” ADA lawsuits filed against Arizona  
  14 businesses and commercial landlords since June 2015. Because Mr. Strojnik single-  
  15 handedly created the “undesirability” of litigating an ADA case in Arizona, this  
  16 factor cuts in favor of reducing his fee amount.

17                   **Awards in similar cases.**

18                  Undersigned counsel recently litigated a fee application filed by Peter K.  
  19 Strojnik, Jr. (the son of Plaintiff’s counsel) in an ADA “pool lift” lawsuit. Judge  
  20 Hollard reduced Mr. Strojnik Jr.’s hourly rate from \$650 to \$350 and awarded him  
  21 \$3,600 in attorney’s fees and \$460 in costs. A copy of Judge Holland’s opinion is  
  22 attached hereto as Exhibit H.

23                   **III. CONCLUSION**

24                  The Court has broad discretion (and ample justification) to deny, or  
  25 significantly reduce Plaintiff’s fee award. A request for \$10,970.50 in fees, costs and  
  26 expenses for a case that includes a copy-and-paste Complaint and *no other substantive*  
  27 *legal work* is simply unreasonable. Mr. Strojnik’s hourly rate of \$650 is also  
  28

1 unreasonable—so too is his claim to have spent more than 12 hours of attorney time on  
2 this matter. Accordingly, the Defendant requests the Court outright deny (or  
3 significantly reduce) the Plaintiff's fee application.

4 RESPECTFULLY SUBMITTED this 21<sup>st</sup> day of March, 2018.

5 **JENNINGS, STROUSS & SALMON, P.L.C.**

6  
7 By: s/ Lindsay G. Leavitt

8 Lindsay G. Leavitt  
9 One East Washington Street, Suite 1900  
Phoenix, AZ 85004-2554  
*Defendant*

10  
11  
12  
13  
14 **CERTIFICATE OF SERVICE**

15  I hereby certify that on March 21, 2018, I electronically transmitted the  
16 attached document to the Clerk's Office using the CM/ECF System for filing  
and transmittal of a Notice of Electronic Filing to the following CM/ECF  
17 registrants:

Peter Strojnik  
[ADA@strojnik.com](mailto:ADA@strojnik.com)  
STROJNIK, P.C.  
2375 East Camelback Road, Ste. 600  
Phoenix, AZ 85016

18  
19  
20  I hereby certify that on March 21, 2018, I served the attached document by  
21 mail on the following, who are not registered participants of the CM/ECF  
System:

22  
23 \_\_\_\_\_  
24 \_\_\_\_\_  
25 \_\_\_\_\_  
26 \_\_\_\_\_  
27 \_\_\_\_\_  
28 \_\_\_\_\_

s/ Tana Davis-Digeno